

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1006 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

versus

BHOJABHAI VASTABHAI BHARWAD & OTHERS

Appearance:

Shri K.P.Rawal, Additional Public Prosecutor, for
the Appellant - State.

Shri K.B.Anandjiwala, Advocate, for Respondents
Nos.1, 3 and 4.

Smt. Sadhana Sagar, Advocate, for Respondent No.2
(Amicus curiae).

CORAM: A.N.DIVECHA, J.
02.12.1996

ORAL JUDGMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate, First Class at Viramgam on 31st August 1990 in Criminal Case No.1419 of 1986 is under challenge in this appeal by leave of this court under Section 378 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for brief). Thereby the learned trial Magistrate acquitted the respondents herein of the offences punishable under Sections 324, 325, 323, 504 and 114 of the Indian Penal Code, 1860 (the I.P.C. for brief) and under Section 135 of the Bombay Police Act, 1951 (the B.P.Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. The incident giving rise to the criminal proceeding against the respondents herein is said to have occurred at about 11.00 p.m. on 18th September 1986 at village Kadvasan taluka Viramgam. It is the prosecution case that the complainant and his two associates, named, Jiva Naran and Vasu Ganesh, were guarding their fields against damage to their crop by stray animals. They were in one field belonging to Jiva Naran from 8.00 p.m. onwards on 18th September 1986. At about 10.45 p.m., a black cow entered their field. They carried the animal to the cattle impounding place. According to the prosecution case, at that place, first of all respondent No.2 herein appeared on the scene and told the complainant and his associates not to get the animal impounded. He was later on joined by respondent No.1 herein and respondents Nos. 3 and 4 herein in that order. It appears that a quarrel ensued and respondent No.1 bit Jiva Naran with his iron-shodded stick on his head. Respondent No.2 herein also bit said Jiva Naran on his buttock with his stick. The complainant tried to intervene but he was held by respondent No.4 herein and he received injuries at the hands of respondent No.3 herein with his stick. It is the prosecution case that Jiva Naran fell unconscious. The complainant and his associates then went to the police station at Mandal and the complainant gave his complaint of the incident at about 0.15 hours of 19th September 1986. The complaint was thus given practically in an hour's time from the occurrence of the incident. Later on, Jiva Naran was carried to municipal hospital at Viramgam for examination and treatment. After examination and primary treatment, the Medical Officer thereat referred Jiva Naran to V.S.Hospital at Ahmedabad for further treatment. It appears that the victim was admitted in V.S.Hospital at Ahmedabad at about 6.00 a.m. on 19th September 1986 and

was discharged on 22nd September 1986 as no serious injury or fracture was found in his head or in any part of his body. The complaint lodged with the police station at Mandal set the investigation machinery into motion. On conclusion of the investigation, the necessary chargesheet was filed on 20th October 1986 against the respondents herein as the accused in the court of the Judicial Magistrate, First Class at Viramgam charging the respondents - accused with the offences punishable under Sections 324, 325, 323, 504 and 114 of the I.P.C. and Section 135 of the B.P.Act. It came to be registered as Criminal Case No.1419 of 1986. The charge against the respondents - accused came to be framed on 21st July 1987. No respondent - accused pleaded guilty to the charge. They were thereupon tried. After recording the prosecution evidence and after recording the further statement of each respondent accused under Section 313 of the Cr.P.C. and after perusing written arguments and hearing oral submissions, by his judgment and order passed on 31st August 1990 in Criminal Case No.1419 of 1986, the learned Judicial Magistrate, First Class at Viramgam acquitted the respondents - accused of the charge levelled against them. That aggrieved the State Government as the prosecution agency. It has therefore invoked the appellate jurisdiction of this court by means of this appeal after obtaining its leave under Section 378 of the Cr.P.C. for questioning the correctness of the aforesaid judgment and order of acquittal passed by the learned trial Magistrate.

3. Respondent No.2 herein has remained ex parte though duly served. I have therefore thought it fit to avail of assistance from learned Advocate Smt. Sadhana Sagar sitting in the courtroom. It must be said to her credit that she got herself prepared within a very short span of time for the purpose of representing respondent No.2 in this appeal.

4. Learned Additional Public Prosecutor Shri Rawal for the appellant - State has taken me through the entire evidence on record in support of his submission that the learned trial Magistrate was not justified in reaching the conclusion that the prosecution could not establish its case against the respondents - accused or any of them beyond any reasonable doubt. Learned Additional Public Prosecutor Shri Rawal for the appellant - State has been critical about the approach of the learned trial Magistrate in appreciating the ocular account of the incident given by the eye witnesses. As against this, learned Advocates Shri Anandjiwala and Smt. Sagar for

the respective respondents have submitted that the learned trial Magistrate has carefully examined and appreciated the material on record and has reached the right conclusion to the effect that the prosecution could not bring the guilt home to the respondents - accused or any of them beyond any reasonable doubt. It has been urged by learned Advocates Shri Anandjiwala and Smt. Sagar for the respective respondents that the view taken by the learned trial Magistrate is a possible view and the impugned judgment and order of acquittal does not call for any interference on that ground according to the well-settled principles of law governing acquittal appeals.

5. Two facts weighed with the learned trial Magistrate in passing the order of acquittal. In the first place, as transpiring from the material on record, several persons arrived on the spot during the course of quarrel between the complainant and his associates and the respondents - accused and none of the independent witnesses was cited as a witness in the complaint. The complainant has given no explanation for not citing any such independent witnesses. This omission on the part of the complainant in not mentioning any independent witnesses out of several persons belonging to his community who had gathered at the place of the incident has not been explained as transpiring from the oral testimony of the complainant.

6. The second fact which weighed with the learned trial Magistrate was the admitted position on record that the complainant and his associates were also armed with sticks at the relevant time and they made no use whatsoever of the sticks in their hands even for private defence. The ordinary course of human conduct would suggest that, when a person is attacked or assaulted by someone with sticks and if the victim himself is also armed with a stick, he would certainly use his stick to defend himself if not for attacking the other side. The complainant and his two associates have acted contrary to this natural conduct of human beings in such circumstances. No good explanation has been found from the evidence of the complainant and his associates with respect to their unusual conduct. The only explanation worth-mentioning is that they did not want to take up any quarrel with the other group. I think this so-called explanation is highly improbable as it runs counter to normal human behaviour in such circumstances. The learned trial Magistrate was quite justified in taking into consideration this course of conduct on the part of the complainant and his associates for the purposes of

acquitting the respondents - accused of the charge levelled against them.

7. Even otherwise, I have found considerable force in the submissions urged before me by learned Advocates Shri Anandjiwala and Smt. Sagar for the respective respondents to the effect that the complainant and his associates themselves have drawn blank as to the ownership of the black cow. It was not their case that the said animal belonged to the respondents - accused or any of them and they therefore obstructed in carrying the animal to the cattle impounding place. If the animal in question belonged to no respondent - accused, there was no reason for them to take up any quarrel with the complainant and his associates or any of them for impounding their animal.

8. It is an admitted position on record that the incident occurred in September 1986. It was admittedly a year of drought. The complainant in his evidence has stated that there was no drought in that area. The strange and surprising feature of the whole case is that no panchnama of the field in which the incident of catching hold of the black cow occurred was drawn. If any such panchnama was drawn, it would have shown whether or not any crop was standing therein and, if it was so, what kind of crop was standing. The investigating officer in his oral testimony has clearly admitted that he made no attempt to draw any panchnama of the field in question nor did he make any attempt to examine the revenue records to find out whether or not any crop had grown in the field in question. This omission on his part is very relevant on his own admission that the year of 1986 was a year of drought. If drought had affected the place where the fields of the complainant and his associates were situated, there would have been no crop and there was no reason for them to guard their fields against damage to their crop by stray animals. The whole episode appears to have been a brainchild of some interested people.

9. In this connection, the defence of the respondents - accused in their further statement under Section 313 of the Cr.P.C. deserves to be noted. All of them have stated that the complainant and his associates were interested in getting respondent No.1 externed from the area and they concocted a false case when they failed in their attempt to seek his externment. This defence becomes relevant in view of what is observed hereinabove.

10. In view of my aforesaid discussion, I am of the

opinion that the impugned judgment and order of acquittal calls for no interference by this court in this appeal.

11. I shall fail in my duty if I do not make a note of appreciation for valuable assistance rendered by learned Advocate Smt. Sadhana Sagar representing respondent No.2 at my instance at a short notice.

12. In the result, this appeal fails. It is hereby dismissed.

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